



INDEPENDENT
TELEPHONE & TELECOMMUNICATIONS
ALLIANCE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 27, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: Docket No. 96-113, Section 251 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses

Dear Mr. Caton:

Enclosed for filing on behalf of the Independent Telephone & Telecommunications Alliance ("ITTA") are an original and ten copies of ITTA's comments in the referenced proceeding.

Should there be any questions regarding this matter, please contact the undersigned counsel.

Sincerely,

Diane Smith

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) GN Docket No. 96-113
Section 257 Proceeding to Identify and)
Eliminate Market Entry Barriers)
For Small Businesses)

COMMENTS OF THE INDEPENDENT

TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone and Telecommunications Alliance ("ITTA") hereby submits these comments in the above captioned proceeding in connection with the Commission's efforts to remove market entry barriers for its members, those independent telephone companies with less than two percent of the subscribed access lines nationwide ("Independent Telcos").

I. INTRODUCTION

Nearly three years ago, 17 independent telephone companies joined together and formed the ITTA to draw attention to the unique needs of the independent telephone industry and to create a strong, unified voice for independent telephone companies as Congress has considered the Telecommunications Act of 1996 (the "1996 Act").¹ ITTA has now turned its efforts to the Commission to ensure that Congress' recognition in the 1996 Act of the unique role that

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56(1996).

Commission to ensure that Congress' recognition in the 1996 Act of the unique role that Independent Telcos will play in a competitive marketplace is implemented faithfully by the Commission. ITTA fully supports the Commission's efforts to remove market entry barriers for small businesses, which include Independent Telcos and to facilitate the development of the fully competitive telecommunications marketplace envisioned by Congress. In an era of national and worldwide telecommunications competition, Independent Telcos should be classified as small businesses when compared to their competitors that include several of the largest companies in the nation and the world including the Regional Bell companies and AT&T.

II. LOCAL EXCHANGE COMPANIES WITH FEWER THAN 2% OF THE NATION'S ACCESS LINES SHOULD BE CONSIDERED SMALL BUSINESSES FOR PURPOSES OF REGULATORY FLEXIBILITY ACT ANALYSIS AND REMOVAL OF BARRIERS TO ENTRY.

Crucial to the elimination of market entry barriers for small businesses is an appropriate definition. For too long, the Commission has relied on distinctions established decades ago which, in many instances, have denied small local exchange carriers adequate regulatory flexibility and opportunity. Indeed, the Commission stated in its recent Interconnection Order "(W)e have found incumbent LECs to be 'dominant in their field of operation' since the early 1980's and we have consistently certified under the RFA that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses" .² Unfortunately, in light of the new competitive challenges presented by the 1996 Act, this position could prove to

² *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98 (released August 8, 1996). para 1330.

be hugely anti-competitive for small local exchange carriers and detrimental to the development of the vigorously competitive marketplace sought by the Commission.

Congress specifically considered whether all incumbent LECs should be subject to the same regulatory requirements when it adopted the 1996 Act. In addition to specific provisions for “rural telephone companies”, Congress recognized that companies with under 2% of the nation’s access lines should be permitted opportunities for regulatory flexibility not provided to large incumbent LECs. This recognition was notable for two reasons. First, it specifically recognized as large companies those with more than 2% of the nation’s access lines. These large companies, it was believed, could hold their own regardless of their regulatory requirements when confronted with competition from a “telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater” than its own.³ Second, Congress specifically recognized the difficulty of “one-size-fits-all” regulatory regimens and sought to ensure that smaller incumbent LECs had the regulatory flexibility necessary to compete fairly.

The Commission has acknowledged these Congressional concerns and the resultant categorization of 2% companies as small companies in its recent Interconnection Order. In that Order, the Commission stated:

Congress generally intended the requirements in section 251 to apply to carriers across the country, but Congress recognized that in some cases,

³ S. Rep. No. 104-23, 104th Cong., 1st sess. (1995)

it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies...⁴

Further, the Commission acted in that Order to ensure that only those companies which fall within the scope of Congressional concern -- which are, in effect, "small" -- are accorded this regulatory flexibility:

We find that Congress intended Sec. 251 (f) (2) only to apply to companies that, at the holding company level, have fewer than two percent of subscriber lines nationwide... (A)ny other interpretation would permit almost any company, including Bell Atlantic, Ameritech, and GTE affiliates, to take advantage of the suspension and modification provisions in Sec. 251 (f) (2). Such a conclusion would render the two percent limitation virtually meaningless.⁵

Thus, extending small company status in this proceeding to rural telephone companies and companies meeting the two percent of access lines nationwide criteria accords both with Congressional intent and Commission precedent. Additionally, extending such recognition to such companies would not entail any risk of abuse by large companies, since the Commission has already acted to prevent such abuse in the interconnection proceeding. Given these considerations, it is important that the Commission consult with the Small Business Administration regarding new regulatory requirements for these smaller carriers and ensure that its existing regulations as well as new proposals do not pose inefficient operational or administrative burdens for smaller local exchange carriers.

⁴ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket No. 96-98 (released August 8, 1996). para 278. p. 587.

⁵ *Ibid*, para 280. p. 588.

III. EXISTING COMMISSION REGULATIONS CREATE BARRIERS TO ENTRY FOR SMALL CARRIERS AND RURAL TELEPHONE COMPANIES

For ITTA companies, "market entry barriers" frequently arise from the imposition of regulations which once, but no longer, service the public interest. The wholesale restructuring of the national telecommunications marketplace by Congress has rendered obsolete many existing regulatory burdens on small companies. The continued existence of these regulatory requirements nonetheless results in barriers to entry which frustrate both the pro-competitive intent of the Act and the desire of consumers for new and improved services.

The Commission is clearly aware of this potential. In its Interconnection Order, the Commission summarized the prospective impact of the Order on small entities and small incumbent LECs, noting:

In addition, our rules are designed to accommodate differences among the regions and carriers, and the reduced regulatory burdens and increased certainty produced by national rules may be expected to minimize the economic impact of our decisions for all parties, including small entities and small incumbent LECs.⁶

This same standard of evaluation -- the economic effects of regulatory burdens on small carriers and rural telephone companies -- should be applied to a wide range of pre-existing regulations in pursuit of a reduction in unnecessary barriers to entry. ITTA believes at least four general areas warrant such review.

⁶ Ibid, para 380. p .627.

(1) “Dominant Carrier” regulation: ITTA has previously drawn attention to the difficulty of continuing to regulate small local exchange carriers as dominant carriers under pre-Act regulatory standards. Such regulation not only fails to advance the public interest, it affirmatively impedes ITTA member company entry into new, competitive markets. It results in unfair advantages for those “large global or nationwide” entities which need not labor under such constraints, a disparity Congress expressly sought to avoid.

(2) Structural safeguards: The Commission has embarked upon a review of continued requirements for structural and other safeguards applicable to incumbent local exchange carriers. This inquiry, in the context of barriers to small business entry into competitive markets, takes on additional meaning for ITTA companies. As in the case of dominant carrier regulation, many Commission policies antedating the 1996 Act will now serve only to frustrate the development of competition and will interfere with the delivery of more and better services to the public. A small business perspective should enhance the Commission’s review of such issues by pulling into sharp focus the unintended or disproportionate effects of such regulations.

(3) Filing Relief and Flexibility: The Act recognizes that the public interest can be enhanced by expediting the time to market for new service offerings and pricing changes. Section 11(b) of the Act, for example, reduces the interval between the filing and effective date for local exchange carrier tariffs. Such time reductions promote entry by small carriers into new business lines and new markets by diminishing red tape and reducing the opportunity

for regulatory abuse by competitors. A thorough review of all Commission regulations for similarly unnecessary and harmful restrictions would likewise promote market entry and competition.

(4) **Reduction in Informational Burdens:** The day-to-day level of informational filings required by the Commission and the states increasing represents a duty without a purpose. In the age of monopoly and rate-base regulation, information arguably was the key to effective control. Post-Act, the competitive marketplace and consumer demand will control. The Commission has already substituted incremental costing policies instead of rate-base and fully distributed cost concepts, with the express intent of passing control of pricing to a competitive marketplace. The residual, atavistic backlog of data and other regulatory filing requirements will rapidly become irrelevant. Worse, it can become anti-competitive, since not all carriers will have an equal duty to disclose competitively useful information on a publicly available basis.

ITTA recognizes that the Commission has undertaken or may initiate in the future proceedings to review aspects of these issues. We wish to focus here on the importance of looking at these issues from a small and rural telephone company perspective. In an age when huge national companies -- interexchange companies, cable companies, and regional holding companies -- can seek statewide and nationwide entry into new markets, it is increasingly inefficient to chain small, locally-oriented carriers to regulatory restrictions which prevent effective competitive responses to such behemoths. This docket affords the Commission a correct perspective, not

yet evident in some of the other proceedings, from which to evaluate the true continued public interest in retaining such regulations. The Act makes clear that new entrants face essentially no barriers to entering existing markets. It is up to the Commission to ensure that existing small carriers will have an equal opportunity to enter and fairly compete in new markets.

IV. CONCLUSION

ITTA supports the Commission's efforts to reduce market entry barriers for small telecommunications carriers. Specifically, the Commission should recognize local exchange companies with fewer than 2% of the nation's access lines as small businesses for purposes of regulatory flexibility act analysis and removal of barriers to entry and should carefully evaluate whether existing or proposed Commission regulations create barriers to entry for such smaller carriers.

Respectfully Submitted,

INDEPENDENT TELEPHONE
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